

13 September, 2011

To: Members of the Wind Turbine Guidelines Advisory Committee

From: David Cottingham, Senior Advisor to the Director, Fish and Wildlife Service

Subject: Changes between the July 12 and Sept 13 versions of the Land-based Wind Energy Guidelines

Background

On July 12, 2011, the U.S. Fish and Wildlife Service circulated a revised draft of its Land-based Wind Energy Guidelines to the public and Wind Turbine Federal Advisory Committee (FAC). The FAC had two days (July 20 and 21) of discussion about the revised draft and established seven subcommittees to further clarify their advice and recommendations to the Service. The subcommittees met several times and presented their information to the full FAC during a conference call on August 23. Based on comments from the FAC and the public, the Service has prepared a new version of the Guidelines (September 13 draft).

The September draft maintains the overall substance and processes of earlier drafts and clarifies points raised by the FAC and the public. In some cases, the Service has adopted the recommendations of the FAC; in others, it has prepared new language to address those issues. The following succinctly describes the way in which the revised Guidelines incorporate the points raised by the FAC and public on the July draft.

Role of the Service

The FAC recommended the Guidelines include a “Communications Protocol.” The Service incorporated the main tenets of the FAC-recommended protocol in a new table (Table 1, Suggested Communications Protocol) that describes the roles of project developers/operators and the Service during each tier. The tasks identified for developers/operators are consistent with activities in the various tiers.

Definition of “Significant”

The FAC initially recommended that the Guidelines deal with “significant adverse impacts to species of concern.” The FAC used the definition of “significant” from CEQ’s NEPA regulations in the glossary. In the February draft Guidelines, the Service changed that to “adverse impacts to fish and wildlife.” Based on public comment and further discussion with the FAC, the Service went back to “significant adverse impacts to species of concern” but sought clarification from the FAC as to the term “significant” as defined in the glossary. At the August 2011 meeting, the FAC modified the glossary definition but continued to rely heavily on the CEQ definition. After careful consideration, the Service believes that the CEQ definition of “significant” is fine for NEPA purposes but is unclear in this context. The September 13 version defines “significant” as follows:

For purposes of impacts to species of concern and their habitats, as used in these Guidelines, significance will be determined in the context of the degree to which each individual project affects the particular locality and region. The determination will focus on the degree to which

the project is likely to affect the long-term status of the population(s) of the affected species of concern. Short-term, long-term, and cumulative effects are relevant.

Adaptive Management

The Service is using the recommendations of the FAC with slight modification regarding the use of adaptive management. We clarify that most developers who follow the Guidelines will not likely have to use adaptive management because project impacts and uncertainty should be low. The tiered approach to decision making used in the Guidelines is itself a form of adaptive management. Adaptive management used in the context of the Guidelines refers to substantial alterations to project design and operation post-construction (pages 22 et seq)

Mitigation

The Service made minor changes to Chapter 8 – Mitigation for clarity. We cross-reference discussions of mitigation and adaptive management. (pp 102 et seq)

Phase-In of Guidelines

We incorporated this section into the Implementation section, which more fully captures the context of this material. The FAC initially recommended that the Guidelines become effective two years after the Service published them as final. This was based on the need to train staff and fully implement the Guidelines. The Service stated that the Guidelines would take effect upon publication in its February and July drafts. The FAC acknowledged that it should not take two years to train Service staff as well as wind project consultants. The FAC initially recommended that the Guidelines not become effective until the 6 months of training was complete post-publication. Since then, the FAC recommended language that the Service adopted to have the Guidelines become effective upon publication with a goal of implementing training within 6 months of publication of the final Guidelines. (page 15)

Habitat Fragmentation

The FAC recognized that the Service was concerned about addressing habitat fragmentation, modification and loss in the Guidelines. They recommended that the Guidelines include a discussion of habitat fragmentation as part of Tier 4 monitoring to the extent that species of habitat fragmentation concern are present at a proposed site. Edits included a discussion about sensitive habitats even when species of habitat fragmentation concern were not present. (pp 78 et seq)

Avian Bat Protection Plans

Several industry representatives on the FAC recommended that an alternative term be substituted for “Avian and Bat Protection Plans (ABPPs)” out of concern that the term implies a mandatory plan with additional permitting and NEPA requirements. The FAC suggested that the term “Guidance Performance Documentation” was more appropriate. While the Service recognizes the concern that field offices may construe that ABPPs are mandatory, when in fact they are voluntary, the Service felt that introducing a new term for the same material would lead to confusion at the field office level. The term was not the concern as much as the practice in the field. The Service reviewed the context of ABPPs and clarified the language to stress that they are voluntary and that other materials may be provided to the Service as long as they contain the relevant information.

Scale of Wind Projects

The FAC made no recommendations regarding this. The Service retained the language in the July 12 version which is as follows:

The Guidelines are designed for “utility- scale” land-based wind energy projects to reduce potential impacts to species of concern, regardless of whether they are proposed for private or public lands. While these Guidelines are designed for utility- scale wind projects, the general principles may also apply to distributed and community-scale wind energy projects. Developers should contact the Service to determine applicability of the Guidelines to their particular project.
(p 15)